

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA

Plaintiff,

v.

Case No. 09-20001

MATTHEW MERCER-KINSER

Defendant.

**ORDER DENYING DEFENDANT’S “MOTION TO MODIFY CONDITIONS OF
SUPERVISED RELEASE”¹**

On February 2, 2009, Defendant Matthew Mercer-Kinser pled guilty to one count of Transportation/Shipment of Child Pornography in violation of 18 U.S.C. § 2254A. (Dkt. # 20.) Five months later, this court sentenced Defendant to 151 months in prison. (Dkt. # 25.) Now before the court is Defendant’s Motion to Modify Conditions of Supervised Release. For the reasons stated below, the court will deny Defendant’s Motion, albeit without prejudice.

I. STANDARD

The court “may modify, reduce, or enlarge the conditions of supervised release, at any time prior to the expiration or termination of the term of supervised release.” 18 U.S.C. § 3583(e)(2). In making this determination, the court should consider whether a condition

(1) is reasonably related to specified sentencing factors, namely the nature and circumstances of the offense and the history and characteristics of the defendant,

¹ This order vacates and supplants an original, nearly identical, order solely to correct a minor typographical error.

and the need to afford adequate deterrence, to protect the public from further crimes of the defendant, and to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(2) involves no greater deprivation of liberty than is reasonably necessary to achieve these goals; and

(3) is consistent with any pertinent policy statements issued by the Sentencing Commission.

United States v. Zobel, 696 F.3d 558, 573 (6th Cir. 2012) (quoting *United States v. Ritter*, 118 F.3d 502, 504 (6th Cir. 1997)). As long as it satisfies these elements, the court may impose “any condition set forth as a discretionary condition of probation in section 3563(b) and any other condition it considers to be appropriate.” 18 U.S.C. § 3583(d).

II. DISCUSSION

Defendant “moves this Court to remove six (6) arbitrary special conditions of supervision.” (Dkt. # 27, Pg. ID 101.) Specifically, he objects to the court’s imposition of the following conditions:

(1) Participation in a program for mental health counseling.

(2) Participation in a program of substance abuse.

(3) Completion of any sex offender diagnostic evaluations, treatment or counseling programs, and polygraph examinations as directed by the probation officer.

(4) Providing accurate information of all computer systems, all passwords, and all Internet service providers to which he has access.

(5) Providing accurate information of all computer systems, all passwords, and all Internet service providers to which he has access.

(6) Complete prohibition on using or possessing alcohol in any consumable form, or being in the social company of any person known to be in possession of

alcohol or illegal drugs or visibly affected by them.

(*Id.*)

The government has not yet responded to Defendant's Motion, nor is a response needed. Because there is no indication that Defendant will be released earlier than 2019, the court finds this Motion premature. In the event that Defendant re-files his Motion closer to his release date, the court will consider it in light of Defendant's behavior while incarcerated in addition to the facts underlying the investigation that lead to his arrest and conviction.

III. CONCLUSION

IT IS ORDERED that Defendant's Motion to Modify Conditions of Supervised Release (Dkt. # 27) is DENIED WITHOUT PREJUDICE.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: February 19, 2016

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, February 19, 2016, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522